

SERVED: April 13, 1995

NTSB Order No. EA-4347

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 7th day of April, 1995

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-13300
v.)	
)	
WILLIAM W. WAWRZYNIAK,)	
)	
Respondent.)	
)	

ORDER DENYING RECONSIDERATION

The Administrator has petitioned for reconsideration of our decision in EA-4297, in which we reversed the Administrator's order suspending respondent's pilot certificate pending a successful re-examination of his competency to hold that certificate. As discussed below, the Administrator's petition is denied.

In EA-4297, we noted that respondent was willing to undergo the requested re-examination, and had effectively conceded the reasonableness of the Administrator's request, but was unable to take the exam because of physical incapacitation (due to injuries suffered in an aircraft accident). We recognized that the Administrator has the "authority to suspend, either through an emergency action or otherwise, an airman certificate pending successful re-examination where the basis for the suspension is reasonable doubt over the airman's competence or qualifications," but noted that this suspension was not so predicated, but was based on respondent's alleged refusal to take the test. EA-4297 at 5. Accordingly, we concluded that "respondent's willingness to submit to re-examination when medically able precludes a

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suspension based on an alleged refusal to take the test." Id.

In his petition, the Administrator challenges the Board's imposition of what he views as a "new limitation" to his authority to suspend an airman's certificate pending successful re-examination: the requirement that the request must first be refused. Specifically, the Administrator asserts that our holding in this case is inconsistent with his statutory authority (to re-examine airmen); with Board precedent (upholding suspensions pending re-examination so long as the Administrator's re-examination request is objectively reasonable); and with the Administrator's policies (unspecified). The Administrator argues that permitting a pilot to retain his or her airman certificate when a reasonable basis exists to question their competency is contrary to the interests of aviation safety, and that "disastrous consequences may result if [such] an airman decided . . . to exercise the privileges of the certificate" prior to undergoing the re-examination.

Our decision in EA-4297 does not in any way diminish the Administrator's statutory authority to re-examine airmen, nor does it affect the validity of our precedent establishing a reasonableness standard for evaluating re-examination requests. Rather, in this case we were asked only to judge the propriety of the Administrator's suspension of respondent's certificate as a sanction for respondent's alleged refusal to comply with an admittedly reasonable request for re-examination. Having found, as a factual matter, that there was no refusal in this case, we found no basis for the suspension.

We addressed the Administrator's concern that an airman in respondent's position might use his pilot certificate before submitting to a re-examination: "such a concern inheres in every re-examination case, including those in which there is prompt compliance with a request for retesting, since a pilot who has been asked to undergo a re-examination does not forfeit the right to exercise the privileges of his certificate before he actually completes any required testing." EA-4297 at 5. If the Administrator believes there is sufficient doubt about the airman's qualifications that he should not be permitted to retain his certificate pending the re-examination, then the certificate should be suspended or revoked on that basis.

In sum, the Administrator has not established any grounds for reconsideration of our earlier decision in this case.

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's petition for reconsideration is denied.

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Members of the Board, concurred in the above order.